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COMMISSIONER

MEMORANDUM

TO: Directors of Special Education

FROM:  Joseph Fisher
Assistant Commissioner

DATE: September 18, 2006

RE: Federal Regulations for Part B of the IDEA

The new federal regulations for IDEA Part B will take effect on October 13, 2006.

The purpose of this memorandum is to provide guidance to local education agencies in Tennessee regarding the administration of IDEA Part B programs pending implementation of new state Part B regulations and policies.

The following is an outline of the new federal regulations which, when effective, will impact the current state regulations in particular areas. The outline provides a summary of the new federal regulation and guidance from the division of special education on how the new federal regulation either changes or supplements the current state regulation in a particular area.

Local education agencies must comply with the guidance provided by this memorandum in the administration of Part B programs in Tennessee until new state regulations are implemented. Any state regulation not referenced by this memorandum remains unaffected and must be complied with until such time as new state regulations are implemented. Individualized education programs currently in effect should not be changed. However, future IEP meetings and future changes to IEPs will be conducted by adherence to the provisions of this memorandum.

Questions regarding administration of the new federal and current state regulations will be directed to Bill Wilson, Attorney for the Division of Special Education at 615-741-0660.

34 CFR §300.5 Assistive technology device.

This regulation clarifies that the term “assistive technology device” does not include a medical device that is surgically implanted, or the replacement of such a device.

The state regulation at 0520-1-9-.01(4) on page 1 does not include this clarification. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.8(c)(9) Child with a disability.

This regulation adds Tourette syndrome to the list of chronic or acute health problems *in the* definition of other health impaired.

The state regulation at 0520-1-9-.01(15)(l) on page 2 does not include this term. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.18 Highly qualified teachers.

This regulation clarifies that the highly qualified teacher requirements do not apply to teachers employed by private elementary schools and private secondary schools.

Tennessee local education agencies should continue to follow prior guidance provided by the Tennessee Department of Education’s Office of Teacher Licensing. This regulation does not change prior guidance.

34 CFR §300.19 Homeless children.

This regulation provides that “homeless children” has the meaning given the term homeless children and youths in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 *et seq.*

The state regulations do not include this definition. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.30 Parent.

This regulation substitutes term “biological” parent for “natural” parent. It also clarifies that to be considered a “parent,” a “guardian” must be a person generally authorized by judicial decree to act as the child’s parent, or authorized to make educational decisions for the child. to the exclusion of the biological or adoptive parent. Otherwise, the biological parent is presumed to be the parent.

The state regulation at 0520-1-9-.01(39) on page 7 does not contain these changes. The federal regulation will be followed pending implementation of new state regulations. LEAs will continue to follow the current state regulations pertaining to foster parents and the appointment of surrogate parents pending implementation of new state regulations.

34 CFR §300.34 Related services.

This regulation excludes, with regard to children with surgically implanted devices including cochlear implants, the optimization of the device's functioning (e.g., mapping), maintenance or the replacement of the device. A child with a surgically implanted device (e.g., cochlear implant) may receive related services that are determined by the IEP Team to be necessary for the child to receive FAPE. An LEA must appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school. An LEA may routinely check an external component of a surgically-implanted device to make sure it is functioning properly.

The state regulation at 0520-1-9-.01(46) on page 8 does not include this language. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.43 Transition services.

This regulation provides that transition services means a coordinated set of activities for a child with a disability that is designed to be within a results oriented process, that "is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities", including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

This adds to the state regulation at 0520-1-9-.11(1)(l)2(i) on page 37. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.45 Ward of the state.

This regulation provides that "ward of the state" means a child who, as determined by the State where the child resides, is a foster child; ward of the State; or in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent in §300.30. State Attorney General Opinion 02-022 advises that a child becomes a "ward of the state" in Tennessee after termination of parental rights and the appointment of DCS as guardian of the child

34 CFR §300.108 Physical education.

This regulation provides that physical education services must be available to every child with a disability receiving FAPE, unless the LEA enrolls children without disabilities and doesn't provide physical education to children without disabilities in the same grades.

This adds to the state regulation at 0520-1-9-.08(10)(a) on page 29. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.131 Child find for parentally-placed private school children with disabilities.

This regulation provides that the LEA where the private school facility at which the child receives instruction is physically located is responsible for conducting child count, child find and evaluations for parentally placed private school children who reside anywhere other than the state, county or city in which the private school facility at which they receive instruction is physically located.

This changes the state regulation at 0520-1-9-.16(1)(a) on page 66 regarding the responsible LEA and changes the directive of the division's memorandum of June 12, 2002. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.136 Compliance.

This regulation provides that a private school official has the right to complain to the state department of education that an LEA did not engage in meaningful or timely consultation.

This adds to the state regulation at 0520-1-9-.16(4)(a)2 on page 69. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.153 Filing a complaint.

This regulation provides that violations alleged in written administrative complaints must have occurred not more than one year prior to the date that the complaint is received by the state department of education.

This adds to the state regulation at 0520-1-9-.14(8) on page 49. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.154 Methods of ensuring services (d)(2)(iv).

This regulation directs an LEA to obtain parental consent each time that access to public benefits or insurance is sought and to notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.

This adds to the state regulation at 0520-1-9-.08(2) on page 27. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.174 Prohibition on mandatory medication.

This regulation provides that an LEA may not condition a child's attendance on the use of a prescription drug.

The state regulations do not include this definition. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.300 Parental consent.

This regulation provides that an LEA must, after providing notice, obtain informed parental consent for an initial evaluation, which can't be construed as consent for an initial provision of services, before conducting an initial evaluation. The LEA must make reasonable efforts to obtain the parent's consent. If a parent doesn't provide consent, or fails to respond to a request for consent, the LEA may, but is not required to, pursue the evaluation through due process procedures, but does not violate IDEA obligations to provide FAPE if it does not do so. If a child is ward of the state and not residing with parents, LEA must make reasonable effort to obtain informed parental consent. A ward of the state is a child whose parents' rights have been terminated and the Department of Children's Services is appointed as the child's guardian.

This regulation provides that an LEA must make reasonable efforts to obtain informed parental consent before an initial provision of special education and related services. The LEA must document attempts to obtain parental consent in order to meet the "reasonable efforts" requirement of the regulation. If a parent refuses services or fails to respond to a request for consent, an LEA may not use the procedural safeguards to obtain an agreement for services or a ruling by a hearing officer that services may be provided. An LEA will not be considered to be in violation of its duty to provide FAPE if a parent refuses services or fails to respond to a request for consent. The LEA doesn't have to convene an IEP meeting or develop an IEP for the child. The best practice is to develop an IEP and offer it. A parent cannot make an informed decision if the parent doesn't know what he or she is refusing.

This regulation provides that an LEA must obtain parental consent for a reevaluation, unless it can demonstrate that it made reasonable efforts to obtain consent and the parent failed to respond. If a parent refuses to consent to a reevaluation, the LEA may, but is not required to, pursue the reevaluation through due process. An LEA does not violate IDEA obligations if it does not do so.

This regulation provides that if the parent of a child with a disability who is home schooled or unilaterally placed in private school at the parent's expense does not provide consent for an initial evaluation or reevaluation, or fails to respond to a request for consent, an LEA may not pursue the evaluation or reevaluation through the procedural safeguards and is not required to consider the child eligible for services. LEAs must document attempts to obtain parental consent.

This adds to the state regulation at 0520-1-9-.14(5) on pages 45 and 46. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.301 Initial evaluations.

This regulation provides that an initial evaluation must be completed within 60 calendar days from the date of the LEA's receipt of parental consent or within a previously established state time limit. Tennessee's 40 school day time limit and waiver provisions will be followed pending implementation of new state regulations. The time limit doesn't apply if the parent repeatedly fails to produce the student for the evaluation. The time limit doesn't apply if a child transfers to a new LEA while an initial evaluation is pending. However, the new LEA must be making sufficient progress to ensure prompt completion of the evaluation and the parent and LEA must agree to a specific time for completion of the evaluation.

This adds to the state regulation at 0520-1-9-.05(3) on page 23. The federal regulation, with the exception of the 60 day time limit, will be followed pending implementation of new state regulations.

34 CFR §300.303 Reevaluations.

This regulation provides that reevaluations may not occur more than once a year, unless the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or if a parent or a teacher requests a reevaluation. Reevaluations must be conducted at least once every three years, unless the parent and LEA agree that a reevaluation is unnecessary.

This changes the state regulation at 0520-1-9-.05(6) on page 23. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.304 Evaluation procedures.

This regulation provides that tests and other materials used to assess a child must be selected and administered so as not to be discriminatory on a racial or cultural basis; and provided and administered in the child's native language or other mode of communication and in a "form most likely to yield accurate information" on what child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to provide or administer in such a form.

This adds to the state regulation at 0520-1-9-.05(12)(a) on page 24. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.305(c)(3) Additional requirements for evaluations and reevaluations.

This regulation provides that when a child's eligibility terminates either by graduation with a regular diploma or by exceeding the age limit for special education and related services, the LEA must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

This adds to the state regulation at 0520-1-9-.06(3) on page 26. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.306 Determination of eligibility.

This regulation provides that a child may not be determined eligible for special education and related services if the determinant factor for eligibility is a lack of appropriate instruction in reading (including essential components of reading instruction as defined by NCLB), or math, or limited English proficiency, and the child does not otherwise meet eligibility criteria.

This changes the state regulation at 0520-1-9-.06(2) on page 26. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.307 Specific learning disabilities.

This regulation provides that a state must not require the use of a severe discrepancy model for determining eligibility and, a state must permit the use of a process based on child's response to scientific, researched-based intervention and, may permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability

This changes the state standard for eligibility as SLD. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.309 Determining the existence of a specific learning disability.

This regulation provides that an IEP team may determine that a child has a specific learning disability if the child does not achieve adequately for the child's age or does not achieve adequately "to meet state-approved grade-level standards" in one or more of: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skill, reading comprehension, mathematics calculation, or mathematics problem solving, when provided with learning experiences appropriate for child's age "or state-approved grade level standards"; the child fails to achieve a rate of learning to make sufficient progress in one or more of the above areas when assessed with a "response to scientific, research-based intervention process" or the child exhibits a pattern of strengths and weaknesses in performance, achievement or both, relative to the child's intellectual development using appropriate assessments; and the findings are not primarily the result of visual, hearing or motor impairment; mental retardation; emotional disturbance; cultural factors; limited English proficiency; or environmental or economic disadvantage. In order to ensure that underachievement in a child suspected of having a specific learning disability isn't due to a lack of appropriate instruction in reading or math, the team must consider data demonstrating that the child was provided appropriate instruction, in a regular education setting, delivered by qualified personnel.

This changes the state standard for eligibility as SLD. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.320 Definition of individualized education program.

This regulation provides that an individualized education program must include the following: a statement of the child's present levels of academic and functional performance; a statement of measurable annual goals, including academic and functional goals; benchmarks or short-term objectives only for children with disabilities who take alternate assessments aligned to alternate achievement standards; special education and related services to be provided to the child must be based on peer-reviewed research to the extent practicable; an explanation of the extent the child will not participate with non-disabled children in a regular class; a statement of individual appropriate accommodations to measure the child's academic achievement and functional performance on state and LEA wide assessments; if the IEP team determines child must take an alternate assessment, a statement of why the child can't participate in a regular assessment and why the particular alternate assessment selected is appropriate; a projected beginning date for services and modifications and their anticipated frequency, location and duration; a description

of how the child's progress toward meeting goals will be measured and when periodic reports will be provided; appropriate measurable post-secondary goals and transition services beginning not later than first IEP to be in effect when child is 16; and beginning not later than one year before child reaches age of majority, statement that child has been informed of rights that will transfer on reaching age of majority.

This changes the state regulation at 0520-1-9-.11(1)(a)-(l) on pages 35 and 36. The federal regulation will be followed pending implementation of new state regulations. Pending implementation of new state regulations short term objectives or benchmarks and statements of transition service needs for children age 14 or younger may be included in an individual child's IEP at the discretion of the IEP team.

34 CFR §300.321 IEP team.

This regulation provides that the individualized education programs must include: parents; not less than one regular education teacher of child (if child is, or may be participating in regular education environment); not less than one special education teacher of child, or if appropriate not less than one special ed provider; an LEA representative who is qualified to provide or supervise provision of specially designed instruction, is knowledgeable about general ed curriculum and is knowledgeable about availability of resources; an individual who can interpret instructional implications of evaluation results; at the discretion of the LEA or parent, other individuals with knowledge or special expertise about the child, including related services personnel if appropriate; and, the child, if appropriate.

This regulation provides that for a child previously served under Part C, an invitation to the initial Part B meeting must, at the request of the parents, be sent to the Part C service coordinator or other representatives of the Part C system.

This regulation provides that a team member will not be required to attend a meeting if the parent and LEA agree in writing that attendance is not necessary because the member's area of curriculum or related services is not being modified or discussed.

This regulation provides that a team member may be excused from attendance, even if the meeting involves modification/discussion of member's area of curriculum, if the parent and LEA consent to excusal in writing and the member submits written input into development of the IEP prior to the meeting. The provision for excusal of IEP team members from attending IEP meetings applies only to the regular ed teacher, the special ed teacher, the LEA representative, and other individuals who can interpret implications of evaluation results.

This adds to the state regulations at 0520-1-9-.09 and 0520-1-9-.10 on pages 31 through 35. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.323 When IEPs must be in effect.

This regulation provides that when a child transfers within a state within the same school year the new LEA must provide services comparable to those of the previous IEP, in consultation with the parents until it either adopts the previous IEP or develops a new IEP. When a child transfers from another state within the same school year, the new LEA must provide services

comparable to those of the previous IEP, in consultation with the parents until it conducts any necessary evaluation and develops a new IEP, if appropriate. The new LEA must take reasonable steps to obtain the child's records, including the IEP, from the previous LEA pursuant to FERPA. The previous LEA must take reasonable steps to promptly respond to the request.

This changes the state regulation at 0520-1-9.10(2)(b) on pages 33 and 34. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.324 Development, review and revision of IEP.

This regulation provides that a parent and LEA may agree to modify an IEP without an IEP team meeting. LEAs are encouraged to consolidate reevaluation and other IEP team meetings. If revisions are made to an IEP without a meeting, the LEA must ensure that the IEP team is informed of the changes.

This adds to the state regulation at 0520-1-9-.10(3) on page 34. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.328 Alternative means of meeting participation.

The parent and LEA may agree to use alternative means of meeting participation, such as video conferencing and conference calls.

This adds to the state regulation at 0520-1-9-.10(3) on page 34. The federal regulation will be followed pending implementation of state regulations.

34 CFR §300.502 Independent educational evaluation.

This regulation provides that parents have a right to an IEE at public expense if they disagree with the evaluation obtained by the LEA. The LEA can request a due process hearing to show its evaluation is appropriate. If a parent obtains an IEE at public expense, or shares a private evaluation with the LEA, the LEA must consider the results, if the parents' IEE meets LEA criteria, in any decision regarding provision of FAPE. A parent is "entitled to only one IEE at public expense each time an LEA conducts an evaluation with which a parent disagrees".

This adds to the state regulation at 0520-1-9-.14(6) on page 46. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.504 Procedural safeguards notice.

This regulation provides that the procedural safeguards notice must be given to parents only one time per year: also upon initial referral or parental request for evaluation; upon receipt of the first written administrative complaint or due process complaint in a school year; upon a disciplinary removal that constitutes a change of placement; and upon request by a parent. The notice must reference the applicable statute of limitations periods.

This adds to the state regulation at 0520-1-9-.14(4)(a) on page 44. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.507 Filing a due process complaint.

This regulation provides that alleged violations must have occurred not more than two years before the date that the complaining party knew or should have known about the alleged action or inaction that forms the basis of the due process complaint. The limitations don't apply if a parent was prevented from filing due to: specific misrepresentations by the LEA that it resolved the problem forming the basis of the complaint or the LEA withheld information that was required to be provided to the parent.

This adds to the state regulation at 0520-1-9-.14(10)(a)1 on page 52. The federal regulation will be followed pending implementation of new state regulations.

This regulation provides that appeals of hearing decisions must be made within 90-days from the date of the decision, unless a state has an explicit time limitation. Tennessee has a 60 day timeline, pursuant to T.C.A. § 4-5-322, which will be followed.

34 CFR §300.508 Due process complaint.

This regulation provides a more formalized due process complaint filing procedure. The party filing a due process complaint must forward a copy of the complaint to the state department of education. The complaint must include: child's name, address, name of school, contact information, description of nature of problem, and proposed resolution. If an LEA has not sent prior written notice, it must file its response to a parent's complaint within 10 days of receipt of the due process complaint. The LEA's response must include: an explanation of why it proposed/refused to take the action raised in the complaint; a description of other options that the IEP team considered and why the options were rejected; a description of each evaluation procedure, assessment, record or report used as a basis for the proposed/refused action; and a description of other relevant factors. A due process complaint is deemed sufficient unless the party receiving it notifies the hearing officer and the other party within 15 days of receipt, alleging insufficiency. The hearing officer then makes a decision as to sufficiency within 5 days. If prior written notice was provided and there is no allegation of insufficiency, the party receiving a due process complaint must, within 10 days of receipt, send to the other party a response that specifically addresses the issues raised in the complaint.

This adds to the state regulation at 0520-1-9-.14(10)(a)6 on pages 53 and 54. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.510 Resolution process.

This regulation provides that a resolution meeting is required within 15 calendar days of an LEA's receipt of a parent's due process complaint. The meeting may be waived by both parties or the parties may agree to mediation. If the LEA has not resolved the due process complaint issues to the satisfaction of the parents within 30 days of receipt of the complaint, the hearing may occur. Except where the parties have jointly agreed to waive the resolution meeting, failure of a parent to participate will delay the 30 day resolution timeline and the 45 day hearing decision timeline. In this event, if the LEA is unable to obtain participation of the parent after reasonable efforts, it may, at the conclusion of the 30-day resolution period, request the hearing

officer to dismiss the parent's complaint. If the LEA fails to hold the resolution meeting within 15 days, or fails to participate in a resolution meeting, the parent may seek the intervention of the hearing officer to begin the 45 day timeline. Exceptions to the 30-day resolution timeline which trigger the start of the 45 day timeline are as follows: the parties agree in writing to waive the resolution meeting; after either mediation or a resolution meeting starts, the parties agree in writing that no agreement is possible; or the parties agree in writing to continue mediation at the end of the 30-day period, but either the parent or LEA withdraws from the mediation. Agreements resulting from resolution meetings may be voided by either party within three business days of execution.

This changes the state regulation at 0520-1-9.14(f) on pages 55 and 56. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.513 Hearing decisions.

This regulation provides that a hearing officer's decision of whether a child receives FAPE must be based on substantive grounds, unless procedural inadequacies impeded the child's right to FAPE, significantly impeded parents' opportunity to participate in decision-making process regarding provision of FAPE, or caused a deprivation of educational benefit.

This adds to the state regulation at 0520-1-9-.14(10) on page 52. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.517 Attorneys' fees.

This regulation provides that a court has discretion to award reasonable attorney's fees to prevailing-party parents. Expert witness fees are not recoverable as attorney's fees in IDEA cases. An LEA may recover attorneys' fees from a parent's attorney who files, or continues to litigate, a case that is frivolous, unreasonable or without foundation. An LEA may recover attorneys' fees from either the attorney or parent, if the complaint is presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase cost of litigation.

This changes the state regulation at 0520-1-9-.14(10)(h) on pages 57 and 58. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.518 Child's status during proceedings.

This regulation provides that when a due process complaint involves the issue of initial services for a child transitioning from Part C to Part B, and the child is no longer eligible for Part C services because child has reached 3 years of age, an LEA is "not required to provide the Part C services that the child had been receiving." If the child is determined eligible under Part B and the parent consents to services, the LEA must provide those services that are not in dispute.

This adds to the provisions of 0520-1-9-.14(10)(i) on page 58. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §530(d) Authority of school personnel.

This regulation provides that after a child is removed for 10 school days in the same school year, and the current removal isn't for more than 10 consecutive days and isn't a change of placement, school personnel, in consultation with one of the child's teachers, may determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting goals in the IEP.

This changes the state regulation at 0520-1-9.15(3) and (4) on pages 61 and 62. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §530(e) Manifestation determination.

This regulation provides that a manifestation review is to be conducted by the LEA, parent and "relevant members" of IEP team, as determined by the parent and LEA. The review must include all relevant information in the student's file, teacher observations and any relevant information provided by the parents. The behavior will be a manifestation of the child's disability in either of the following cases: the conduct in question was caused by, or had direct and substantial relationship to, the child's disability; or the conduct in question was the direct result of the LEA's failure to implement the IEP. If the LEA, parent and relevant members of IEP team determine that the child's behavior was the direct result of the LEA's failure to implement IEP, the LEA must take immediate steps to remedy deficiencies.

This changes the state regulation at 0520-1-9.15(6) and 0520-1-9-.15(7) on pages 62 and 63. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.530(g) Special circumstances.

This regulation provides that school officials have the authority to remove a child with a disability to an interim alternate educational setting for not more than 45 school days if the child carries a weapon to or possesses a weapon at school, on school premises or at a school function; knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises or at a school function; or has inflicted serious bodily injury upon another person while at school, on school premises or at a school function.

This adds to the state regulation 0520-1-9-.15(1)(a)3 on page 59. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.532 Appeals.

This regulation provides that upon appeal by an LEA of a disciplinary decision, a hearing officer may order a change of placement to an appropriate interim alternate educational setting for not more than 45 school days if the hearing officer determines that maintaining current placement is "substantially likely" to result in injury to the child or to others. Upon appeal by a parent of a disciplinary decision, a hearing officer may also return a child to the placement from which the

child was removed if he determines that a removal was improper or that the child's behavior was a manifestation of the disability.

This changes the state regulation at 0520-1-9-.15(2) on pages 60 and 61. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.532(c) Expedited due process hearing.

This regulation provides that the parent of a child with a disability who disagrees with any decision regarding a interim alternate disciplinary placement or a manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a due process hearing. The hearing must be expedited so as to occur within 20 days of the date a hearing is requested and the hearing officer must render a decision within 10 school days after the hearing. Unless the parents and the LEA agree in writing to waive the resolution meeting or agree to use the mediation process, the resolution meeting must occur within 7 days of the LEA's receipt of the parent's due process request. The hearing may proceed within 15 days of receipt of the due process request unless the matter is resolved to the satisfaction of both parties

This adds to the state regulation at 0520-1-9-.15 (10) on pages 64 and 65. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.533 Placement during appeals.

This regulation provides that when an appeal of a disciplinary action is requested (either by a parent to challenge a manifestation determination or other disciplinary action by the LEA, or by an LEA to seek removal to an interim alternate educational setting), the child will remain in the interim alternate setting pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs earlier.

This adds to the state regulations at 0520-1-9-.15(7)(c) and 0520-1-9-.15(9) on pages 62 and 63. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.534 Protections for children not determined eligible for special education.

This regulation provides that a child may assert the IDEA disciplinary protections if an LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. An LEA is presumed to have knowledge if: a parent expressed concern in writing to LEA supervisory or administrative personnel, or teacher of the child, that the child needed services; the parent requested an evaluation; or a teacher of the child, or other LEA personnel, expressed specific concerns about a pattern of behavior directly to the special education director or other supervisory personnel. An LEA is not deemed to have knowledge if the parent has not allowed evaluation or refused services; or the child has been evaluated and determined not to have disability. A child's receipt of early intervening services (RTI) does not result in a presumption of knowledge on the part of the LEA.

This adds to the state regulation at 0520-1-9-.15(12) on pages 65 and 66. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.536 Changes of placement because of disciplinary removals.

This regulation provides that a change of placement occurs if: the removal is for more than 10 consecutive school days; or the child has been subjected to a series of removals that constitute a pattern because: the series of removals total more than 10 school days in a school year; “the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals”; and such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. An LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement and the determination is subject to review through due process and judicial proceedings.

This adds to the state regulation at 0520-1-9-.15(3) on page 61. The federal regulation will be followed pending implementation of new state regulations.

34 CFR §300.711 Early intervening services.

This regulation provides that an LEA may spend up to 15 percent of its IDEA funds to provide coordinated, early intervening services for students in grades K through 12, with an emphasis on grades K through 3, who have not been identified as needing special education and related services, but who need additional academic and behavioral support to succeed in the regular education environment.

This is a new federal regulation which will be followed pending implementation of new state regulations.